

JUDGE STEIN

09 CV 2322

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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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 VARSITY BRANDS, INC., VARSITY SPIRIT
 FASHIONS AND SUPPLIES, INC. and VARSITY
 SPIRIT CORPORATION,

Plaintiffs,

-against-

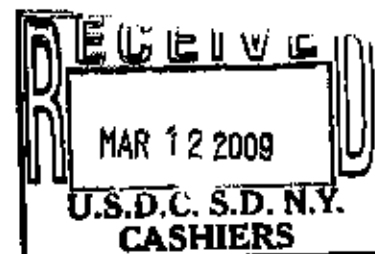
YSS ATHLETICS INC., JOHN DOES, JANE DOES
 and XYZ COMPANIES,

Defendants.
 ----- X

Civil Action No. ____

ECF Case

COMPLAINT



Plaintiffs Varsity Brands, Inc., Varsity Spirit Fashions and Supplies, Inc. and Varsity Spirit Corporation, by and through their undersigned attorneys, for their complaint against Defendants YSS Athletics Inc., John Does, Jane Does and XYZ Companies, hereby allege as follows:

NATURE OF THE ACTION

1. This is a civil action for copyright infringement arising under the copyright laws of the United States, 17 U.S.C. § 101 *et seq.*, as amended (the "Copyright Act").

PARTIES

2. Plaintiff Varsity Brands, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 6745 Lenox Center Court, Memphis, Tennessee 38115.

3. Plaintiff Varsity Spirit Corporation is a corporation organized and existing under the laws of the State of Tennessee with its principal place of business at 6745 Lenox Center Court, Suite 300, Memphis Tennessee 38115.

4. Plaintiff Varsity Spirit Fashions & Supplies, Inc. is a corporation organized and existing under the laws of the State of Minnesota with its principal place of business at 6745 Lenox Center Court, Suite 300, Memphis, Tennessee 38115. Plaintiffs Varsity Brands, Inc., Varsity Spirit Fashions and Supplies, Inc. and Varsity Spirit Corporation are hereinafter referred to as "Varsity."

5. Upon information and belief, Defendant YSS Athletics Inc. ("YSS") is a corporation organized under the laws of the State of Georgia, with a principal place of business located at 4565 Ashington Drive, Snellville, GA 30039, and does and/or transacts business in this District.

6. Upon information and belief, Defendants John Does and Jane Does transact, do business in this District, and/or are actively and regularly engaged in the tortious activities referred to herein. The identities of Defendants John Does and Jane Does are not presently known to

Varsity, and Varsity will amend this Complaint to include the name or names of said individuals if and when they permit themselves to be identified.

7. Upon information and belief, Defendants XYZ Companies, through their agents, servants and employees, transact, do business in this District, and/or are here actively and regularly engaged in tortious activities referred to further herein. The true identities of Defendants XYZ Companies are not presently known to Varsity, and Varsity will amend this Complaint to include the name or names of same if and when they permit themselves to be identified. Defendants YSS Athletics, Inc., John Does, Jane Does and XYZ Companies are sometimes hereinafter referred to as "Defendants."

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) with respect to the claims arising under the federal Copyright Act.

9. Venue is properly laid in this District pursuant to 28 U.S.C. § 1391(b) and (c).

FACTUAL BACKGROUND

Varsity's Original Designs and Catalogs

10. Varsity is and for many years has been among the most successful and highly respected companies in the United States engaged in the business of designing, manufacturing and selling high-quality apparel and accessories for use in cheerleading and related activities.

11. Varsity's success is due in no small measure to its employment, at great cost to Varsity, of highly talented individuals who create for Varsity, original and attractive two-dimensional designs ("Varsity Designs") that are reproduced on and/or applied to Varsity apparel and accessories, in a continuing effort to appeal to existing and potential customers in the highly competitive cheerleading apparel and accessories business.

12. All of Varsity's apparel is made in the United States, also at great cost to Varsity.

13. The Varsity Designs are created as works made for hire by Varsity's employees, and constitute copyrightable subject matter under the Copyright Act.

14. Varsity owns all right, title and interest in and to the Varsity Designs.

15. Each year, Varsity produces, at great expense, using models, photographers and graphic designers, original full-color catalogs showing Varsity apparel and accessories (the "Varsity Catalogs") and distributes copies of such Varsity Catalogs to its customers and potential customers in the highly competitive cheerleading apparel and accessories business.

16. The Varsity Catalogs, and the original text and photographic images therein, are original creations and constitute copyrightable subject matter under the Copyright Act.

17. Varsity owns all right, title and interest in and to the Varsity Catalogs and the copyrights therein.

Defendants' Infringing Activities

18. Defendants offer for sale apparel for cheerleading and related activities via their websites and, upon information and belief, distribute such apparel in interstate commerce. YSS's website is located at www.yssathletics.com.

19. Upon information and belief, Defendants also offer their apparel for sale through catalogs, which are accessible via their websites or via the mail.

20. Defendants, without permission, license or consent from Varsity, have copied a significant number of Varsity Designs. The Varsity Designs at issue, and the unauthorized copies appearing in Defendants' current catalogs and/or online, include the following:

- (a) Varsity Design 078 and Defendants' Design SH0222 and PTO 222 (copies attached hereto as Exhibit 1).

(b) Varsity Design 981 and Defendants' Design SH0820 (copies attached hereto as Exhibit 2).

(c) Varsity Design 017 and Defendants' Design PTO 214 (copies attached hereto as Exhibit 3).

(d) Varsity Design 062 and Defendants' Design SH0218 (copies attached hereto as Exhibit 4).

(e) Varsity Design 056 and Defendants' Design SH0614 (copies attached hereto as Exhibit 5).

(f) Varsity Design 412 and Defendants' Design SH0622 (copies attached hereto as Exhibit 6).

(g) Varsity Design 733 and Defendants' Design SH0214 and SK30 (copies attached hereto as Exhibit 7).

(h) Varsity Design 623 and Defendants' Design SH00203 and 0230 (copies attached hereto as Exhibit 8).

(i) Varsity Design 065 and Defendants' Design SH0216M (copies attached hereto as Exhibit 9).

(j) Varsity Design 516 and Defendants' Design SH0718 (copies attached hereto as Exhibit 10).

(k) Varsity Design 812 and Defendants' Design PTO223 (copies attached hereto as Exhibit 11).

(l) Varsity Design 615 and Defendants' Design SH0704 (copies attached hereto as Exhibit 12).

(m) Varsity Design 9213 and Defendants' Design SH0213A (copies attached hereto as Exhibit 13).

21. Defendants are on constructive notice of Varsity's rights as well as on actual notice due to a letter sent to YSS asserting such rights. Such letter remains unanswered.

FIRST CLAIM FOR RELIEF
(Copyright Infringement)

22. Varsity repeats and realleges the assertions contained in paragraphs 1 through 21 above.

23. Design 078 is registered in Varsity's name at the United States Copyright Office under Registration No. VA 1-417-427, with an effective date of May 21, 2007. A copy of the Certificate of Registration is attached hereto as Exhibit 14.

24. Defendants, without authorization from Varsity, are selling, distributing, advertising and have sold goods bearing a design that is copied from and substantially similar to Varsity's Design 078.

25. Defendants have thereby infringed Varsity's copyright in Design 078.

26. Upon information and belief, Defendants' infringing acts were committed with knowledge or in reckless disregard of Varsity's exclusive rights in Design 078 under the federal Copyright Act.

27. Upon information and belief, by the acts complained of Defendants have made substantial profits and gains which they are not in law or in equity entitled to retain.

28. The aforementioned acts by Defendants have damaged and, if not enjoined, will continue to damage Varsity and cause it irreparable harm, for which Varsity has no adequate remedy at law.

SECOND CLAIM FOR RELIEF
(Copyright Infringement)

29. Varsity repeats and realleges the assertions contained in paragraphs 1 through 28 above.

30. Design 981 is registered in Varsity's name at the United States Copyright Office under Registration No. VA-1-319-224, with an effective date of April 29, 2005. A copy of the Certificate of Registration is attached hereto as Exhibit 15.

31. Defendants, without authorization from Varsity, are selling, distributing, advertising and have sold goods bearing a design that is copied from and substantially similar to Varsity's Design 981.

32. Defendants have thereby infringed Varsity's copyright in Design 981.

33. Upon information and belief, Defendants' infringing acts were committed with knowledge or in reckless disregard of Varsity's exclusive rights in Design 981 under the federal Copyright Act.

34. Upon information and belief, by the acts complained of Defendants have made substantial profits and gains which they are not in law or in equity entitled to retain.

35. The aforementioned acts by Defendants have damaged and, if not enjoined, will continue to damage Varsity and cause it irreparable harm, for which Varsity has no adequate remedy at law.

THIRD CLAIM FOR RELIEF
(Copyright Infringement)

36. Varsity repeats and realleges the assertions contained in paragraphs 1 through 35 above.

37. Design 017 is registered in Varsity's name at the United States Copyright Office under Registration No. VA 1-408-822, with an effective date of April 10, 2007. A copy of the Certificate of Registration is attached hereto as Exhibit 16.

38. Defendants, without authorization from Varsity, are selling, distributing, advertising and have sold goods bearing a design that is copied from and substantially similar to Varsity's Design 017.

39. Defendants have thereby infringed Varsity's copyright in Design 017.

40. Upon information and belief, Defendants' infringing acts were committed with knowledge or in reckless disregard of Varsity's exclusive rights in Design 017 under the federal Copyright Act.

41. Upon information and belief, by the acts complained of Defendants have made substantial profits and gains which they are not in law or in equity entitled to retain.

42. The aforementioned acts by Defendants have damaged and, if not enjoined, will continue to damage Varsity and cause it irreparable harm, for which Varsity has no adequate remedy at law.

FOURTH CLAIM FOR RELIEF
(Copyright Infringement)

43. Varsity repeats and realleges the assertions contained in paragraphs 1 through 42 above.

44. Design 062 is registered (under the title WS062RA) in Varsity's name at the

United States Copyright Office under Registration No. VA 1-404-956, with an effective date of August 22, 2006. A copy of the Certificate of Registration is attached hereto as Exhibit 17.

45. Defendants, without authorization from Varsity, are selling, distributing, advertising and have sold goods bearing a design that is copied from and substantially similar to Varsity's Design 062.

46. Defendants have thereby infringed Varsity's copyright in Design 062.

47. Upon information and belief, Defendants' infringing acts were committed with knowledge or in reckless disregard of Varsity's exclusive rights in Design 062 under the federal Copyright Act.

48. Upon information and belief, by the acts complained of Defendants have made substantial profits and gains which they are not in law or in equity entitled to retain.

49. The aforementioned acts by Defendants have damaged and, if not enjoined, will continue to damage Varsity and cause it irreparable harm, for which Varsity has no adequate remedy at law.

FIFTH CLAIM FOR RELIEF
(Copyright Infringement)

50. Varsity repeats and realleges the assertions contained in paragraphs 1 through 49 above.

51. Design 056 is registered in Varsity's name at the United States Copyright Office under Registration No. VA 1-408-822, with an effective date of April 10, 2007. A copy of the registration information from the Copyright Office database is attached hereto as Exhibit 16.

52. Defendants, without authorization from Varsity, are selling, distributing, advertising and have sold goods bearing a design that is copied from and substantially similar to Varsity's Design 056.

53. Defendants have thereby infringed Varsity's copyright in Design 056.

54. Upon information and belief, Defendants' infringing acts were committed with knowledge or in reckless disregard of Varsity's exclusive rights in Design 056 under the federal Copyright Act.

55. Upon information and belief, by the acts complained of Defendants have made substantial profits and gains which they are not in law or in equity entitled to retain.

56. The aforementioned acts by Defendants have damaged and, if not enjoined, will continue to damage Varsity and cause it irreparable harm, for which Varsity has no adequate remedy at law.

SIXTH CLAIM FOR RELIEF
(Copyright Infringement)

57. Varsity repeats and realleges the assertions contained in paragraphs 1 through 56 above.

58. Design 412 is registered in Varsity's name at the United States Copyright Office under Registration No. VA 1-408-822, with an effective date of April 10, 2007. A copy of the Certificate of Registration is attached hereto as Exhibit 16.

59. Defendants, without authorization from Varsity, are selling, distributing, advertising and have sold goods bearing a design that is copied from and substantially similar to Varsity's Design 412.

60. Defendants have thereby infringed Varsity's copyright in Design 412.

61. Upon information and belief, Defendants' infringing acts were committed with knowledge or in reckless disregard of Varsity's exclusive rights in Design 412 under the federal Copyright Act.

62. Upon information and belief, by the acts complained of Defendants have made substantial profits and gains which they are not in law or in equity entitled to retain.

63. The aforementioned acts by Defendants have damaged and, if not enjoined, will continue to damage Varsity and cause it irreparable harm, for which Varsity has no adequate remedy at law.

SEVENTH CLAIM FOR RELIEF
(Copyright Infringement)

64. Varsity repeats and realleges the assertions contained in paragraphs 1 through 63 above.

65. Varsity Design 733 registered is registered in Varsity's name at the United States Copyright Office under Registration No. VA 1-428-822, with an effective date of April 10, 2007. A copy of the Certificate of Registration is attached hereto as Exhibit 16.

66. Defendants, without authorization from Varsity, are selling, distributing, advertising and have sold goods bearing a design that is copied from and substantially similar to Varsity's Design 733.

67. Defendants have thereby infringed Varsity's copyright in Design 733.

68. Upon information and belief, Defendants' infringing acts were committed with knowledge or in reckless disregard of Varsity's exclusive rights in Design 733 under the federal Copyright Act.

69. Upon information and belief, by the acts complained of Defendants have made substantial profits and gains which they are not in law or in equity entitled to retain.

70. The aforementioned acts by Defendants have damaged and, if not enjoined, will continue to damage Varsity and cause it irreparable harm, for which Varsity has no adequate remedy at law.

EIGHTH CLAIM FOR RELIEF
(Copyright Infringement)

71. Varsity repeats and realleges the assertions contained in paragraphs 1 through 70 above.

72. Varsity Design 0623 registered is registered in Varsity's name at the United States Copyright Office under Registration No. VA 1-428-457 (under the title WS0623A), with an effective date of August 22, 2006. A copy of the Certificate of Registration is attached hereto as Exhibit 18.

73. Defendants, without authorization from Varsity, are selling, distributing, advertising and have sold goods bearing a design that is copied from and substantially similar to Varsity's Design 0623.

74. Defendants have thereby infringed Varsity's copyright in Design 0623.

75. Upon information and belief, Defendants' infringing acts were committed with knowledge or in reckless disregard of Varsity's exclusive rights in Design 0623 under the federal Copyright Act.

76. Upon information and belief, by the acts complained of Defendants have made substantial profits and gains which they are not in law or in equity entitled to retain.

77. The aforementioned acts by Defendants have damaged and, if not enjoined, will continue to damage Varsity and cause it irreparable harm, for which Varsity has no adequate remedy at law.

NINTH CLAIM FOR RELIEF
(Copyright Infringement)

78. Varsity repeats and realleges the assertions contained in paragraphs 1 through 77 above.

79. Varsity Design 065 registered is registered in Varsity's name at the United States Copyright Office under Registration No. VA 1-428-461 (under the title MFBL065W), with an effective date of August 22, 2006. A copy of the Certificate of Registration is attached hereto as Exhibit 19.

80. Defendants, without authorization from Varsity, are selling, distributing, advertising and have sold goods bearing a design that is copied from and substantially similar to Varsity's Design 065.

81. Defendants have thereby infringed Varsity's copyright in Design 065.

82. Upon information and belief, Defendants' infringing acts were committed with knowledge or in reckless disregard of Varsity's exclusive rights in Design 065 under the federal Copyright Act.

83. Upon information and belief, by the acts complained of Defendants have made substantial profits and gains which they are not in law or in equity entitled to retain.

84. The aforementioned acts by Defendants have damaged and, if not enjoined, will continue to damage Varsity and cause it irreparable harm, for which Varsity has no adequate remedy at law.

TENTH CLAIM FOR RELIEF
(Copyright Infringement)

85. Varsity repeats and realleges the assertions contained in paragraphs 1 through 84 above.

86. Varsity Design 516 registered is registered in Varsity's name at the United States Copyright Office under Registration No. VA 1-428-696 (under the title WS0516A), with an effective date of August 22, 2006. A copy of the Certificate of Registration is attached hereto as Exhibit 20.

87. Defendants, without authorization from Varsity, are selling, distributing, advertising and have sold goods bearing a design that is copied from and substantially similar to Varsity's Design 516.

88. Defendants have thereby infringed Varsity's copyright in Design 516.

89. Upon information and belief, Defendants' infringing acts were committed with knowledge or in reckless disregard of Varsity's exclusive rights in Design 516 under the federal Copyright Act.

90. Upon information and belief, by the acts complained of Defendants have made substantial profits and gains which they are not in law or in equity entitled to retain.

91. The aforementioned acts by Defendants have damaged and, if not enjoined, will continue to damage Varsity and cause it irreparable harm, for which Varsity has no adequate remedy at law.

ELEVENTH CLAIM FOR RELIEF
(Copyright Infringement)

92. Varsity repeats and realleges the assertions contained in paragraphs 1 through 91 above.

93. An application to register the copyright in Design 812 in Varsity's name at the United States Copyright Office was filed in May 2008.

94. Defendants, without authorization from Varsity, are selling, distributing, advertising and have sold goods bearing a design that is copied from and substantially similar to Varsity's Design 812.

95. Defendants have thereby infringed Varsity's copyright in Design 812.

96. Upon information and belief, Defendants' infringing acts were committed with knowledge or in reckless disregard of Varsity's exclusive rights in Design 812 under the federal

Copyright Act.

97. Upon information and belief, by the acts complained of Defendants have made substantial profits and gains which they are not in law or in equity entitled to retain.

98. The aforementioned acts by Defendants have damaged and, if not enjoined, will continue to damage Varsity and cause it irreparable harm, for which Varsity has no adequate remedy at law.

TWELFTH CLAIM FOR RELIEF
(Copyright Infringement)

99. Varsity repeats and realleges the assertions contained in paragraphs 1 through 98 above.

100. An application to register the copyright in Design 615 in Varsity's name was filed at the United States Copyright Office in June 2008.

101. Defendants, without authorization from Varsity, are selling, distributing, advertising and have sold goods bearing a design that is copied from and substantially similar to Varsity's Design 615.

102. Defendants have thereby infringed Varsity's copyright in Design 615.

103. Upon information and belief, Defendants' infringing acts were committed with knowledge or in reckless disregard of Varsity's exclusive rights in Design 615 under the federal Copyright Act.

104. Upon information and belief, by the acts complained of Defendants have made substantial profits and gains which they are not in law or in equity entitled to retain.

105. The aforementioned acts by Defendants have damaged and, if not enjoined, will continue to damage Varsity and cause it irreparable harm, for which Varsity has no adequate remedy at law.

THIRTEENTH CLAIM FOR RELIEF
(Copyright Infringement)

106. Varsity repeats and realleges the assertions contained in paragraphs 1 through 105 above.

107. Varsity Design 9213 registered is registered in Varsity's name at the United States Copyright Office under Registration No. VA-1-653-808, with an effective date of July 9, 2008. A copy of the registration information from the Copyright Office database is attached hereto as Exhibit 21.

108. Defendants, without authorization from Varsity, are selling, distributing, advertising and have sold goods bearing a design that is copied from and substantially similar to Varsity's Design 9213.

109. Defendants have thereby infringed Varsity's copyright in Design 9213.

110. Upon information and belief, Defendants' infringing acts were committed with knowledge or in reckless disregard of Varsity's exclusive rights in Design 9213 under the federal Copyright Act.

111. Upon information and belief, by the acts complained of Defendants have made substantial profits and gains which they are not in law or in equity entitled to retain.

112. The aforementioned acts by Defendants have damaged and, if not enjoined, will continue to damage Varsity and cause it irreparable harm, for which Varsity has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Varsity respectfully requests that the Court:

1. Find that Defendants have infringed upon Varsity's copyrights in the Varsity Catalogs and the Varsity Designs;

2. Preliminarily and permanently enjoin Defendants, their officers, agents, employees, and related companies, and all persons acting for, with, by, through, or under them, from manufacturing, copying, reproducing, distributing, advertising, promoting, offering for sale or selling any product or article (a) bearing any design identical or substantially similar to any of the Varsity Designs or (b) comprising or incorporating any protectible matter copied from and substantially similar to any of the Varsity Catalogs;

3. Order the impoundment of the infringing goods pursuant to 17 U.S.C. § 503;

4. Order Defendants, their officers, agents, employees and related companies, and all persons acting for, with, by, through, or under them, to destroy all products or articles infringing the copyrights in the Varsity Designs and/or the Varsity Catalogs, as well as all other infringing materials;

5. (a) Award to Varsity its actual damages incurred as a result of Defendants' acts of copyright infringement, and all profits Defendants realized as a result of their acts of copyright infringement, in amounts to be determined at trial; or

(b) In the alternative, award to Varsity, pursuant to 17 U.S.C. § 504, statutory damages for each act of copyright infringement committed by Defendants;

6. Award to Varsity, pursuant to 17 U.S.C. § 505, its costs and attorneys' fees incurred as a result of Defendants' acts of copyright infringement;

7. Direct Defendants, pursuant to 15 U.S.C. § 1116(a), to file with the Court and serve upon Varsity, within thirty (30) days after entry of final judgment, a report in writing and under oath setting forth in detail the manner and form by which they have complied with the provisions set forth in paragraphs 7 and 8 above; and

8. Award to Varsity such other and further relief as the Court deems just and proper.

Dated: New York, New York
March 12, 2009

Respectfully submitted,

COWAN LIEBOWITZ & LATMAN, P.C.

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